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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,093	10/09/2003	Marty R. Jordan	JOR001-092	8107
<div>7590 03/22/2007 DIEDERIKS & WHITELAW, PLC #301 12471 Dillingham Square Woodbridge, VA 22192</div>			<div>EXAMINER MARKOFF, ALEXANDER</div> <div>ART UNIT 1746 PAPER NUMBER</div>	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/22/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/681,093

Applicant(s)

JORDAN ET AL.

Examiner

Alexander Markoff

Art Unit

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims require "substantially lowers" (claim 1) or "significantly reduce" (claim 11). These terms are relative terms lacking proper comparative basis. The use of these terms makes claims indefinite. The terms are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 9 is indefinite because the term "the sealing surface" lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-22 are rejected under 35 U.S.C. 102(b) as anticipated by Kaldenberg (US Patent No 3,529,881).

Kaldenberg teaches a dishwasher with sound proofing means. See entire document, especially Figure 5 and the related description.

The dishwasher of Kaldenberg comprises conventional parts, such as tub, walls, frame, etc.

The dishwasher comprises door (11), control (16), sound proofing panel (20), and front part (17).

The limitations of what is referenced by the claims as sound tray and flexible seal are met by the disclosure of the combination of part (20) and part (17).

For the claims requiring different shapes and connection arrangements of the claimed seal, portions of the seal and tray: it is noted that what is referenced by the claims as the sound tray can be interpreted as different combination of parts 17, 24, 33, 32.

As to claim 22, which requires a cable and actuating member attached to the cable and the tray: Kaldenberg teaches conventional control mechanism 16. Control mechanism 16 is connected to one end of part 23, which is interpreted as the actuating member. One end of part 23 is pivotally attached to parts 32, 33, 24, 17 (the sound tray). Control 16, which is attached to the other end of part 23, inherently includes attached electrical cables.

Response to Arguments

5. Applicant's arguments filed 12/22/06 have been fully considered but they are not persuasive.

The applicants argue that the rejection made under 35 USC 112(2) with respect to the terms "substantially lowers" (claim 1) and "significantly reduce" (claim 11) is not proper.

The applicants rely on the disclosure on page 10, line 15 and page 14 lines 13-20 of the specification to allege that the claims are not indefinite.

The examiner disagrees. Neither the cited part of the specification, nor other parts of the disclosure provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

It is also noted that in contrast to the applicants statement claim 9 is indefinite because the term "the sealing surface" lacks proper antecedent basis. The applicants stated that they amended the claim to obviate this deficiency. However, no such amendment was made.

With respect to the rejection of claims made over Kaldenberg:

The applicants allege that Kaldenberg does not teach a seal, which extends across the gap between the sound tray and the bottom portion of the door.

The examiner disagrees. Kaldenberg clearly shows that part (20, 21) extends across the gap between the door and parts (17, 24).

The examiner understands that what is presented on Figures 3-6 of the instant application is different from the disclosure of Kaldenberg, however, the claims are not limited to such embodiments.

With respect to claim 9 the applicants argue that this claim is presented in means-plus-function term.

This argument is confusing. There is no means-plus-function language in claim 9.

It is possible that the applicants meant claim 11, which uses the term "means for..". However, this claim does not use a proper "means-plus-function" language to require interpretation under 35 USC 112(6) because the claim describes the structure of the referenced "means".

With respect to the dependent claims the applicants argue that parts 24, 20, etc. could not be reasonably considered as parts of the sound tray.

The examiner disagrees. The sound tray as claimed extends across the frame below the bottom portion of the door and defines a gap between the tray and the door. The referenced parts in combination with part (17) meet such requirements, see Figs. 5 and 6. The L shape is met by the disclosure of parts (17) and (24) , see Figure 6. The top portion is shown on the referenced Figure 6 (top portion of part (24, 35). The Z shape is shown on Figure 5.

As to claims 20-22:

The examiner again would like to note that he understands that what is presented on Figures 7 and 8 of the instant application is different from the disclosure of Kaldenberg, however, the claims are not limited to such embodiments.

The claims neither specify construction of the sound tray, the bottom portion of the door, nor require direct attachment of the tray and the bottom portion or movable sound tray.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DE 19907144 and DE 19907145 are cited to show the state of the prior art with respect to arrangements for sound proofing dishwashers.

7. If the applicants wish to discuss the case with the examiner, the request for the interview would be granted after final rejection.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alexander Markoff
Primary Examiner
Art Unit 1746

AM

ALEXANDER MARKOFF
PRIMARY EXAMINER